

D.T.E. 03-76-A

August 20, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

In the Matter of:

ESS.Com, LLC	D.T.E. 03-76-1
Euronet Communications Corp.	D.T.E. 03-76-2
Gerson Group	D.T.E. 03-76-3
Long Distance Billing Services, Inc.	D.T.E. 03-76-4
Maxcess, Inc.	D.T.E. 03-76-6
Norstar Communications, Inc.	D.T.E. 03-76-8
Ntera, Inc.	D.T.E. 03-76-9
Pride America, Inc.	D.T.E. 03-76-13
SecurFone America, Inc.	D.T.E. 03-76-14
StormTel, Inc.	D.T.E. 03-76-15

I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 03-76, Vote and Order to Open Investigation at 1 (2004) (“Vote and Order”); Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed.

G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in additional penalty. Id. If the Department finds that a common carrier has neglected to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

A number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for the years 2001 and 2002. Although this Order pertains to several investigations of failure to file annual returns with nearly identical facts, the dockets are not consolidated, and thus the findings of fact and directives issued in this Order are applicable to each company, individually.

II. PROCEDURAL HISTORY

On February 3, 2004, the Department opened separate investigations into the failure by 15 telephone companies to file annual returns and pay statutory forfeitures to the Commonwealth for both years 2001 and 2002, and into the failure by an additional 25 telephone companies to file their 2002 annual returns and pay statutory forfeitures. Vote and Order. The Department determined that 15 of these 40 companies were registered during both 2001 and 2002 to provide telecommunications services in the Commonwealth, because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2001 and 2002. Id. at 1.

The Department opened investigations into the 40 companies, docketing each separately as indicated in Appendix A and Appendix B to this Order.¹ This Order pertains to the

¹ In the Vote and Order, the Department opened investigations regarding Paramount International Telecommunications, Inc. ("Paramount"), docketed as D.T.E. 03-76-12, and TeleCents Communications, Inc. ("TeleCents"), docketed as D.T.E. 03-76-34. However, the Department subsequently discovered that TeleCents had in fact complied with the annual return filing requirement, and did not owe an overdue annual return or statutory forfeitures. Paramount complied with the Notice of Investigation and Hearing
(continued...)

following dockets: ESS.Com, LLC, D.T.E. 03-76-1; Euronet Communications Corp., D.T.E. 03-76-2; Gerson Group, D.T.E. 03-76-3; Long Distance Billing Services, Inc., D.T.E. 03-76-4; Maxcess, Inc., D.T.E. 03-76-6; Norstar Communications, Inc., D.T.E. 03-76-8; Ntera, Inc., D.T.E. 03-76-9; Pride America, Inc., D.T.E. 03-76-13; SecurFone America, Inc., D.T.E. 03-76-14; and StormTel, Inc., D.T.E. 03-76-15.

Pursuant to notice (“Notice”) duly issued,² the Department conducted public and evidentiary hearings in each of these proceedings on April 14, 2004, and May 25, 2004. No party entered an appearance or filed comments. The evidentiary record in each proceeding contains four exhibits.³

¹(...continued)

(April 21, 2004) by filing its annual returns for 2001 and 2002, each showing no intrastate revenues. The Department notified the companies that they were in compliance, and that it had cancelled the hearings involving TeleCents and Paramount and dismissed both cases. D.T.E. 03-76-34, Hearing Officer Memorandum Re: TeleCents Communications, Inc. (April 30, 2004); D.T.E. 03-76-12, Hearing Officer Memorandum Re: Paramount International Telecommunications, Inc. (May 14, 2004).

² The Department sent a Notice of Hearing and Investigation to the last known address of each of the companies on February 4, 2004 and April 21, 2004, and published the Notice in the Boston Globe on April 26, 2004.

³ Because the exhibits in each proceeding are identical types of documents, all references to exhibits in this Order will omit the docket number and simply refer to the corresponding exhibit number; e.g., “Exhibit 1.” Exhibit 1 is the company’s statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company’s tariff, as filed with the Department. Exhibit 3-01 is the July 1, 2002 letter that the Department’s Telecommunications Division sent to the company, extending the 2001 annual return filing deadline to July 22, 2002. Exhibit 3-02 is the August 22, 2003 letter that the Department’s Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003.

III. ANALYSIS AND FINDINGS

Each company that is the subject of this Order was a registered common carrier of telecommunications services during year 2001 and 2002, because each company had an approved tariff and statement of business operations on file with the Department.⁴

D.P.U. 93-98, at 12. Therefore, each company was obligated to file an annual return for 2001 and 2002 pursuant to G.L. c. 159, § 32; G.L. c. 166, § 11. Vote and Order at 1-2. Prior to commencing these investigations, the Department granted extensions, in both 2001 and 2002, for filing of annual returns past the March 31 annual deadline without incurring the statutory forfeiture, but only if the company filed by the new deadline.⁵ For the 2001 annual return, the Department extended the filing deadline for annual returns to July 22, 2002, and notified all telecommunications companies operating in the Commonwealth by certified mail. Id. at 2. For the 2002 annual return, the Department extended the filing deadline to September 19, 2003, and again notified the telecommunications companies by certified mail. Id. The Department did not grant any additional extensions. To date, none of the companies that are the subject of this Order have filed the overdue annual returns.

The Department served Notice of its investigation and hearing upon the companies, advising each company that the Department was investigating the company's neglect to file

⁴ StormTel, Inc. filed its statement of business operations under the name Z-Tel, Inc. on June 30, 1997 (Exh. 1), then filed a revised tariff and letter informing the Department of the name change to StormTel, Inc. on December 31, 1998 (Exh. 2).

⁵ The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32.

annual returns and that failure to respond or to produce the information requested in the Notice would lead to adverse findings of fact and orders for corrective action. See Vote and Order at 2-4. None of these companies responded to the Notice.

Accordingly, the Department finds that each of these companies individually named in this Order neglected to file its 2001 annual return by March 31, 2002 and its 2002 annual return by March 31, 2003, and that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies to each company calculated from those dates.⁶ These forfeitures continue to accrue.

Further, the Department must consider whether each company's refusal or neglect to file was unreasonable. G.L. c. 166, § 12. Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. The companies named herein have provided no excuse for the failure to file their returns more than a year after the deadline for 2002 and more than two years after the deadline for 2001.

Moreover, in addition to failing to respond to the Notice of these investigations, or to appear on either of the two hearing dates, each company ignored or failed to respond to notices

⁶ The extension of the filing deadline applied only to companies that filed by the new deadline. Because the companies named in this Order did not file their annual returns by the extended deadline the Department offered, the forfeitures are calculated from the original statutory annual due date of March 31. See D.T.E. 02-13-A; D.T.E. 02-13-D; D.T.E. 02-13-F.

from the Department's Telecommunications Division reminding the company that it failed to file its annual return, and extending the deadline (Exhs. 3-01, 3-02). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to comply with the Commonwealth's statutory requirements, the companies' failure to respond compounds those companies' neglect of their reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part of these companies to file annual returns is unreasonable. Therefore, both the continuing daily forfeiture, accrued from March 31, 2002, as well as the additional \$500 forfeiture, as provided in G.L. c. 166, § 12, are applicable to each company for failure to file a 2001 annual return; and the continuing daily forfeiture, accrued from March 31, 2003, and the additional \$500 forfeiture, are applicable to each company for failure to file a 2002 annual return.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that ESS.Com, LLC; Euronet Communications Corp.; Gerson Group; Long Distance Billing Services, Inc.; Maxcess, Inc.; Norstar Communications, Inc.; Ntera, Inc.; Pride America, Inc.; SecurFone America, Inc.; and StormTel, Inc. shall immediately file annual returns for the years 2001 and 2002 and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED that the findings reached herein are applicable to ESS.Com, LLC, individually, in docket D.T.E. 03-76-1; and it is

FURTHER ORDERED that the findings reached herein are applicable to Euronet Communications Corp., individually, in docket D.T.E. 03-76-2; and it is

FURTHER ORDERED that the findings reached herein are applicable to Gerson Group, individually, in docket D.T.E. 03-76-3; and it is

FURTHER ORDERED that the findings reached herein are applicable to Long Distance Billing Services, Inc., individually, in docket D.T.E. 03-76-4; and it is

FURTHER ORDERED that the findings reached herein are applicable to Maxcess, Inc., individually, in docket D.T.E. 03-76-6; and it is

FURTHER ORDERED that the findings reached herein are applicable to Norstar Communications, Inc., individually, in docket D.T.E. 03-76-8; and it is

FURTHER ORDERED that the findings reached herein are applicable to Ntera, Inc., individually, in docket D.T.E. 03-76-9; and it is

FURTHER ORDERED that the findings reached herein are applicable to Pride America, Inc., individually, in docket D.T.E. 03-76-13; and it is

FURTHER ORDERED that the findings reached herein are applicable to SecurFone America, Inc., individually, in docket D.T.E. 03-76-14; and it is

FURTHER ORDERED that the findings reached herein are applicable to StormTel, Inc., individually, in docket D.T.E. 03-76-15; and it is

FURTHER ORDERED that the findings of fact and directives herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

APPENDIX B

Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34
Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40